



CCM 2015 Testimony

900 CHAPEL STREET, 9th FLOOR, NEW HAVEN, CT 06510-2807 PHONE (203) 498-3000 FAX (203) 582-8314

Your source for local government management information www.ccm-ct.org

LABOR & PUBLIC EMPLOYEES COMMITTEE

January 29, 2015

The Connecticut Conference of Municipalities (CCM) is Connecticut's statewide association of towns and cities and the voice of local government - your partners in governing Connecticut. Our members represent over 92% of Connecticut's population. We appreciate the opportunity to testify on bills of interest to towns and cities.

Good afternoon, my name is Steve Werbner, Town Manager of Tolland. I am a member of the CCM Board of Directors, and Chairman of the CCM Committee on Labor Relations.

CCM opposes SB 593 as a new unfunded state mandate on municipalities.

SB 593 would mandate the expansion of workers' compensation coverage to *all* individuals (private and public employees) with an "emotional or mental impairment" as the result of "visually witnessing the death or maiming, or visually witnessing the immediate aftermath of such death or maiming, of one or more human beings...". Although SB 593 identifies certain circumstances by which the mandated benefits would be awarded – **the proposal contains no correlation between an award of the proposed mandated benefits with any physical injury, or use of deadly force.**

Simply put, SB 593 would allow any municipal employee (a paramedic, a fire marshal, any first responder, a public workers crew member, parks employees, etc.) – whether on-duty or not – to arrive at a crime scene several hours after such scene was "secured" and be eligible for full wage replacement benefits under the workers' compensation system – at the expense of towns and cities. **Mandating such benefits would impose a considerable negative impact on local resources – particularly as many towns are considering employee layoffs, service reductions, or property tax increases.** The administrative and legal costs just to manage the claims filed for this new mandate – let alone fully fund such benefits – would significantly negatively impact all communities – large and small.

The costs of SB 593 would be real. The Office of Fiscal Analysis' (OFA) non-partisan staff have acknowledged that this proposed unfunded state mandate would "result in increased premiums" for towns and that other consequences of this proposal would result in "a wide range of potential per claim costs" on already struggling local budgets. Specifically, OFA has cited the potential added costs of this proposal's unintended consequence: "It is important to note that once an injury is identified as a work related injury and covered under the workers' compensation program any subsequent injury or impairment which can be causally linked to the initial injury is also covered by workers' compensation, resulting in a wide range of potential per claim costs. Emotional impairment, in the form of long term PTSD, has been linked to other physical health issues including but not

limited to cardiovascular disease. In the event an individual receiving workers' compensation coverage for a PTSD or other emotional impairment claim, develops a physical ailment whose etiology is linked to their emotional distress, the state will be liable for the cost of treating the employee's related physical condition. The fiscal impact will depend on the condition and course of treatment."¹

Towns and cities are already forced to manage such "associated costs". The following is a snapshot of a pending mental stress claim in Connecticut:

- A municipal police officer has filed a PTSD claim, as a result of being subjected to the use of deadly force. The police officer's claim is being litigated for PTSD. That claim is carrying a \$704,000 incurred (which equals = Temporary Disability Reserve; Permanent Disability Reserve; Medical Reserve; Legal & Expense Reserves and Paid to Date). In sum, that figure represents outstanding reserves and paid – which demonstrates that, mental stress claims impact local budgets -- even before special benefits may or may not be awarded.

The California Experiment

California's experience with mandated mental-mental benefits supports this concern as "**California workers file claims more frequently than workers in other states...The incidence of workers' compensation claims...is 22% higher than the national average.**"² According to the Workers Compensation Research Institute (WCRI) "...California experienced a 430 percent increase from 1980-1986" in mental stress claims.³ Furthermore, "the system is vulnerable to the highly litigious practice of relying on adversarial dueling medical experts – one or more experts hired by each party. WCRI research shows that this leads to unnecessarily high litigation costs and delays payments to deserving workers."⁴

The experience in California is further illustrative: "although the goal of compensating a physically or mentally disabled worker is sound, certain difficulties arise in compensating workers for mental injuries. These difficulties arise principally from the mental-mental claim category, recognized in California...indeed these factors contribute to the *continuous susceptibility to fraud and malingering in a mental-mental injury claim*. A news article reported that even the highest official of a California labor union stated that the 'system fosters abuse.' Moreover, advertising by physicians and attorneys which invites dissatisfied workers to file stress claims has been criticized as fostering fraud....Workers' compensation fraud is a '\$1 billion problem in the state,' according to one estimate."⁵

Let me be clear, the dedication and service of our employees, particularly our first responders, is not at issue. What is at question is **whether local property taxpayers – and their hometown budgets – should be mandated by the State to provide special mental-mental benefits** from "witnessing" a crime scene, or its "aftermath" – **without any financial assistance from the State**. If the State deems SB 593 essential – it should pay for it. The State is in a better position to do so than our towns and cities.

¹ Office of Fiscal Analysis, SB 56, 2014, File No. 49.

² Rita Maroney McPeake, *Workers' Compensation Law*, in *Managing the Private Law Library* 1992, at 401, 412 (PLI Pat., Copyrights, Trademarks, & Literary Prop. Course Handbook Series No 335, 1992).

³ "Liability for Employee Grievances: Mental Stress and Wrongful Termination", Dr. Richard B. Victor. 10-88.

⁴ Ibid.

⁵ "Reforming the Reform: Mental Stress Claims under California's Workers' Compensation System; Aya V. Matsumoto. 6-1-94; Loyola of Los Angeles Law Review.

CCM opposes SB 593 for the following reasons:

- **SB 593 would mandate a highly subjective and potentially costly, unfunded mandate on towns and cities.** As noted by OFA in similar proposals from years past, the costs of just one emotional stress case could be significant. **The cost of an individual “mental-stress” case for either partial disability or a permanent total claim could range from tens of thousands – to over \$1 million dollars for the duration of the claim, depending on the circumstances.**
- **SB 593 is overly broad and would expose municipalities to potential fraud:**
 - **It would allow individuals to receive such special benefits based on a diagnosis by psychologist (i.e. a counselor or therapist), based on their witnessing an event or viewing a crime scene hours after an event, regardless of whether they were on-duty or not, or required to be at the scene. It would mandate such special benefits as long as the event was “causally connected with the employee's employment.”**
 - **“Visually witnessing” is subject to interpretation and could mean simply viewing photographs or videos of a crime scene, or of the deceased or injured.**
 - **The definition of “death” is also subject to interpretation and could mean someone may not have actually witnessed a person’s last breath but, because an individual died at a later date/time and location (i.e. a hospital) which then could be considered “witnessing a death.”**
 - **The definition of “maiming” is open to very broad interpretation, forcing municipal officials to devote considerable time and resources to thwart mental disability fraud, which has proven to not be uncommon.**
- **A diagnosis of “mental or emotional impairment,” as proposed in SB 593, is highly subjective and could overlap with existing symptoms of depression, substance abuse, or other anxiety disorders. SB 593 is also imprecise, as it does not distinguish among the spectrum of mental stress diagnoses thus, would cover all judgments from acute stress disorders, to post-traumatic stress disorders, to longer-term chronic or delayed onset disorders, essentially creating an open-ended eligibility.**
- **Municipal CEOs do not ignore injuries “from the neck up.” Towns and cities already offer health insurance, disability leave, and Employee Assistance Programs (EAPs) to employees suffering from mental or emotional impairments.** These existing benefits provide employees access to counseling, therapy, and other essential services to assist them and their families during difficult periods.
- **SB 593 would obligate limited local administrative, forensic, medical, legal, and financial resources otherwise devoted to managing other workers’ compensation claims submitted by employees with physical injuries.**

SB 593 - A Slippery Slope

- **SB 593 would establish a dangerous precedent of ambiguous standards and would create a “slippery-slope” toward more mandated benefits for a variety of other circumstance such as “threatening of death” or simply “serious injury” – which is an avenue of compensation our hometowns cannot afford to go down. Does anyone seriously doubt that the language of this proposal, if enacted, would be broadened every few years to the point where employers will be required to provide benefits to employees experiencing general mental stress? Connecticut state statutes are filled with such inch-by-inch laws.**

Towns Cannot Afford Another Unfunded Mandate

There are over 1,200 mandates imposed on towns and cities on the books. Struggling to come out of the worst economy since the Great Depression, municipalities cannot afford another unfunded state mandate. Hometowns across the State have enacted painful budget cuts and are guarding against additional cuts. Deep cuts in services and massive layoffs have occurred in Connecticut's central cities – with the prospect of additional layoffs on the horizon. **SB 593 would exacerbate the fiscal crisis within municipalities, and would be antithetical to the shared goal of enacting relief from state mandates – a core value of the M.O.R.E. Commission.**

Conclusion

It is imperative that both the policy and cost **implications of turning Connecticut's workers' compensation system upside down are very carefully weighed.** As state lawmakers deliberate means of assisting individuals subjected to certain events, it is also important that options outside the insurance system are considered that would ensure the intent of SB 593 is upheld, while not bankrupting town and city halls.

The issue of determining how to assist Connecticut's residents who are affected by certain, tragic events must be solved via a statewide solution. No individual municipality should be mandated by the State to shoulder the expense of special benefits and administrative (legal, medical, etc.) costs from stress claims as a result of someone having witnessed the aftermath of a crime, or injury.

Lawmakers should therefore, consider some of the following approaches:

1. Dedicate a percentage of the State's Rainy Day Fund to support the Workers' Assistance Fund which was created two years ago;
2. Amend the eligibility of the Fund, and the deadlines to access the Fund, by making it a permanent statewide resources that could be modeled after the Second Injury Fund, and that shares the burden of said "extraordinary events" via both state and local buy-in;
3. Examine establishing a structure similar to Massachusetts' "Victims of Violent Crime Compensation Fund" which could be administered by the State; or
4. Convene a working group to better vet these, and other statewide approaches, of which CCM would be eager to participate.

The General Assembly has been wise to take no action on such a proposed unfunded state mandate the past several years – and should do so again. Good intentions can have unintended consequences – as would be the case with SB 593.

CCM urges the Committee to **take no action on SB 593.**



If you have any questions, please contact Bob Labanara, State Relations Manager, CCM at rlabanara@ccm-ct.org or (203) 498-3023.